S.B.CIVIL WRIT PETITION NO.6555/2003.
(The State of Rajasthan and another. v. Shiv Raj Singh and another).
DATE OF ORDER: FEBRUARY 1,2005.

HON'BLE MR. JUSTICE R.P.VYAS

Mr.Rameshwar Dave, Deputy Government Advocate, for the State -
Petitioners.
Mr.P.R.Mehta, for the respondents-caveator.

Petitioners - Secretary to the Government, Irrigation Department, Rajasthan, Jaipur and the Chief Engineer, Mahi Project, Banswara - have filed the instant petition praying therein that the award dated 3.5.2002 (Annexure P/4), passed by the Tribunal cum Labour Court, Udaipur may be quashed and set aside.

Brief facts giving rise to the instant petition are that Shiv Raj Singh – respondent No.1 was working as Welder Grade II in the Department of the petitioner No.2. He filed a complaint before the Labour Welfare Officer and Conciliation Officer, Banswara, stating therein that he was not paid the pay scale of the post of Welder Grade I from January, 1983 to March,1989 and instead of that, he was given the pay scale of Welder Grade II w.e.f. January 1, 1985.

The Labour Welfare Officer-cum-Conciliation Officer, Banswara sought the comments from Department. The Department sent comments on 16.10.97 stating therein that Shiv Raj Singh (Respondent No.1)

was initially appointed as Welder Grade II, but, on account of clerical mistake, Grade I was mentioned instead of Grade II. He was given first appointment on daily wages @ Rs.17/- per day which was admissible to Welder Grade II. It was stated that he has worked on muster roll from 1983 to 1989. It was also stated that when Shiv Raj Singh (respondent No.1) demanded for granting him the pay scale of Welder Grade I , the Assistant Engineer, Bhungara Canal Division, Mahi Project, Banswara vide his letter dated 21.1.88 asked him to produce Experience Certificate of five years and I.T.I. Pass Certificate or Ten Years' Experience Certificate, which Shiv Raj Singh (Respondent No.1) failed to produce. Therefore, he was not granted the Pay Scale of Welder Grade I.

After considering the comments from the Department, the Conciliation Officer, Banswara submitted a failure report to the State Government vide his letter dated 12.7.99.

Ultimately, vide Notification dated 18.4.2000 the State Government made a reference for adjudication to the Labour Court, Udaipur (Respondent No.2) under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act').

Shiv Raj Singh (respondent No.1) filed his calim petition before the Labour Court on 20.10.2000, but the Department did not file any affidavit in defence.

The learned Tribunal, after hearing the parties

and examining the documents, accepted the claim of the workman – Shiv Raj Singh (respondent No.1) by its award dated May 3, 2002.

Heard learned counsel for the parties.

It may be mentioned that the workman – Shiv Raj Singh (respondent No.1) was employed as Welder Grade I and he has also discharged the duties and functions of the post of Welder Grade I. In this respect, he has also produced a job card (Annexure R/1) of Welder Grade- I issued by the Department. Apart from that, as per the Rajasthan Work Charged Rules, 1964 (hereinafter referred to as 'the Rules, 1964'), the only requirement for the post of Welder Grade – I is I.T.I.Certificate and two years' experience. For the sake of arguments, if it is accepted that the workman was appointed on the post of Welder Grade II w.e.f. 1.8.83, even then, in the year, 1989, he has acquired the requisite experience of five years and he was entitled to get the pay scale of Welder Grade I, as he has been continuously working as Welder Grade – I since 1983 and his work was found satisfactory by the Department. It was rightly held by the Tribunal that the Department ought to have given the Post and pay scale of Welder Grade-I to the applicant Shiv Raj Singh when he has acquired the experience of five years.

In this view of the matter, the finding arrived at by the Tribunal is just and proper. It does not call

for any interference by this Court under Articles 226 and 227 of the Constitution of India.

In the result, I do not find any merit in the instant petition. The same is, therefore, dismissed.

(R.P.VYAS), J..

scd.